

900 KAR 2:060. Hearings concerning transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)

STATUTORY AUTHORITY: KRS 216.515, 216.525, 216.557, 216.560, 216.567, 42 C.F.R. 483.12

NECESSITY, FUNCTION, AND CONFORMITY: 42 CFR 483.12 requires that the state shall have in place a fair and impartial decision-making process for appeals related to involuntary transfer and discharge. This administrative regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This administrative regulation sets forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and administrative regulations.

Section 1. Definitions. (1) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(2) "Hearing officer" means the person designated by the cabinet to conduct a hearing and make a decision regarding any appealed transfer or discharge.

(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

Section 2. Hearing Procedure. (1) Upon receipt of notice of appeal in accordance with 900 KAR 2:050 or 900 KAR 2:020, Section 2(1) and (2), the secretary of the cabinet shall appoint a hearing officer and a hearing shall occur within thirty (30) days.

(2) Notice of hearing shall be mailed to the facility and resident not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons, time, and place of the hearing. The notice of hearing shall be mailed by certified mail, return receipt requested, to the facility and the resident.

(3) The facility and the resident may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6)(a) The hearing officer shall review the:

1. Cabinet's determination that the resident's rights were violated; and
2. Fine imposed by the cabinet.

(b) The hearing officer shall base his review of the cabinet's determination and fines on the:

1. Facts of the case; and
2. Requirements of KRS 216.555, 216.557, 216.560, and this administrative regulation.

(c) Appropriate to the facts of the case, KRS Chapter 216, and this administrative regulation, the hearing officer may:

1. Sustain the cabinet's determination and fine; or
2. Determine that the rights of the resident were not violated, and that the imposition of a fine was

not warranted; or

3. Make a different determination with regard to the severity or type of violation, and the fine required by KRS Chapter 216; or

4. Make any other decision warranted by the facts, KRS Chapter 216, and this administrative regulation.

(7) The hearing shall be the only hearing as it relates to cabinet findings regarding fines, citations and cited deficiencies concerning transfer and discharge rights under this or any licensure regulations.

(8) The hearing officer's decision shall be the final determination of the cabinet. The cabinet shall forward the decision to the resident and facility within ten (10) days of the receipt of the hearing officer's decision.

(9) no hearing officer shall participate in any hearing involving a facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, fiduciary, contractual creditor or consultative relationship or any familial relation to the resident.

(10) A judicial review may be accorded the resident or facility as specified in KRS 216.570. (18 Ky.R. 1731; 2345; 2824; eff. 3-7-1992; Crt eff. 3-22-2019.)